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**ORIGINAL**

MAR 24 2008

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JAMES N. HATTEN, CLERK  
By: *[Signature]* Deputy Clerk

Zywave, Inc.,  
10700 W. Research Drive, Suite 400  
Milwaukee, WI 53226,

Plaintiff,

v.

Alicia Moran a/k/a Alice Abdullaeva,  
a/k/a Alisa Abdullaeva, Sergei Millian,  
Millian Group, Inc., and  
www.brokersbriefcase.com

Defendants.

**CIVIL ACTION**

**FILE NO.: 1 08 - CV - 1172**

**TCB**

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Zywave, Inc. (hereinafter "Zywave"), through its attorneys, complains of Defendants Alicia Moran a/k/a Alice Abdullaeva a/k/a Alisa Abdullaeva, Segei Millian, Millian Group, Inc., and www.brokersbriefcase.com (hereinafter "Defendants") as follows:

**THE PARTIES**

1. Zywave is a Wisconsin corporation having a principal place of business located at 10700 W. Research Drive, Suite 400, Milwaukee, WI 53226.

2. Upon information and belief, Defendant Alicia Moran, a/k/a Alice Abdullaeva, a/k/a Alisa Abdulleava is a Georgia resident who works and can be served at 1921 Stancrest Trace, Kennesaw, GA 30152.

3. Upon information and belief, Defendant Sergei Millian is a Georgia resident who works and can be served at 970 Sidney Marcus Boulevard, Suite 1504, Atlanta, GA 30324.

4. Upon information and belief Defendant Millian Group, Inc. is a Georgia corporation whose primary place of business is 970 Sidney Marcus Boulevard, Suite 1504, Atlanta, GA 30324. Millian Group, Inc. can be served with the summons and complaint in this manner by delivery of same to its registered agent, Siarhei Kukuts, at 970 Sidney Marcus Boulevard, Suite 1504, Atlanta, GA 30324.

### **NATURE OF THE ACTION**

5. This is an action for trademark infringement under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. § 1051 *et. seq.*), and false designation of origin under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. § 1051 *et. seq.*).

6. This Complaint generally avers that Defendant has infringed, has represented a false designation of origin, and has engaged in unfair trade

competition with respect to United States Trademark Registration No. 2507442 for the BROKER BRIEFCASE mark, owned by Zywave, and that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 (actions arising under 15 U.S.C., Chapter 22 - Trademarks), 28 U.S.C. §1331 (federal question), 28 U.S.C. § 1332 (diversity of citizenship), 28 U.S.C. § 1338(a) (acts of Congress relating to trademarks).

8. This Court has personal jurisdiction over the Defendant because the Defendants reside in this judicial district.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to the claims have occurred in this District and the Defendants are subject to personal jurisdiction in this District at the time the action was commenced.

**COUNT ONE:  
INFRINGEMENT OF TRADEMARK REGISTRATION  
NO. 2507442 IN VIOLATION OF 15 U.S.C. §1114**

10. Zywave hereby re-alleges and incorporates by reference the allegations of paragraphs 1 through 9 of this Complaint as if fully set forth herein.

11. Zywave is the owner and registrant of United States Trademark Registration No. 2507442 registered November 13, 2001 for the BROKER BRIEFCASE mark for Computer software for the use in analyzing and managing insurance claims and insurance services, such as providing information and assistance in the sale, design and management of insurance policies, plans and programs. A copy of the registration is attached hereto as Exhibit A.

12. The United States Trademark Registration for the BROKER BRIEFCASE mark is now valid, subsisting, uncanceled, and unrevoked.

13. Continuously since approximately January 11, 1997, Zywave has used its BROKER BRIEFCASE mark in interstate commerce in connection with and to identify its computer software and insurance services, and to distinguish those computer software and insurance services from similar products/services offered by other companies by, without limitation, prominently displaying the mark with or on its on its website, [www.brokerbriefcase.com](http://www.brokerbriefcase.com) and by using the mark on advertising and promotional materials for its computer software and insurance services distributed throughout the United States.

14. The computer software and insurance services sold under the BROKER BRIEFCASE mark are provided nationwide, including in the State of Georgia.

15. As of the date of the filing of this Complaint, Zywave is actively engaged in marketing and promoting the BROKER BRIEFCASE mark in connection with the business of providing employee benefits and property & casualty insurance software solutions for brokers and their clients in interstate commerce through various means, including a website owned and controlled by Zywave located at <http://www.Zywave.com> on the Internet.

16. Upon information and belief, Defendants have used and are using the BROKER BRIEFCASE mark of Zywave in commerce in connection with the sale of computer software and real estate broker services.

17. At least one instance of the Defendants' use of the BROKER BRIEFCASE mark is depicted in webpages from the Defendant's website at <http://www.brokersbriefcase.com>, copies of which are attached hereto as Exhibit B.

18. Upon information and belief, Defendants have used and are currently using the BROKER BRIEFCASE mark of Zywave, in connection with the sale, offering for sale, distribution, or advertising of non-downloadable computer software and related real estate brokerage services, in a manner that is likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1114.

19. Upon information and belief, Defendants have reproduced, counterfeited, copied, and imitated the BROKER BRIEFCASE mark of Zywave and applied such reproduction, counterfeit, copy, or imitation to its website and advertisements intended to be used in commerce in connection with the sale, offering for sale, distribution, or advertising of non-downloadable computer software and real estate brokerage services, in a manner that is likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1114.

20. Defendants' use of the BROKER BRIEFCASE mark of Zywave is without the consent, authorization or permission of Zywave.

21. Zywave's registration of the BROKER BRIEFCASE mark with the U.S. Patent and Trademark Office provides constructive notice of Zywave's claim of ownership of the mark pursuant to 15 U.S.C. § 1072.

22. Defendants' use of the Infringing Mark has occurred notwithstanding Zywave's well-known and prior established rights in the BROKER BRIEFCASE mark and with constructive notice of Zywave's federal registration rights.

23. Defendants have willfully and in bad faith infringed the BROKER BRIEFCASE mark of Zywave in interstate commerce by the various acts as complained of above.

24. Defendants' infringing activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to Zywave's business, reputation and good will in its federally registered BROKER BRIEFCASE trademark. Zywave has no adequate remedy at law and is entitled to injunctive relief.

**COUNT TWO:  
FALSE DESIGNATION OF ORIGIN  
IN VIOLATION OF 15 U.S.C. § 1125(a)**

25. Zywave re-alleges and incorporates by reference the allegations of paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Upon information and belief, Defendants have used the BROKER BRIEFCASE mark or designation, or variations thereof, on or in connection with the sale of computer software and real estate brokerage services, in interstate commerce and, in particular, on Defendants' website.

27. Defendants' use of the BROKER BRIEFCASE mark or designation constitutes a false designation of origin and a false or misleading description and representation of fact which is likely to cause initial interest confusion, actual confusion, and mistake, and to deceive as to the affiliation, connection, or association of Zywave with Defendants and as to the origin, sponsorship, or approval of Defendants' products and commercial activities by Zywave.

28. Defendants' use of the BROKER BRIEFCASE mark of Zywave, including the use of the mark on Defendants' website, constitutes false advertising, false designation of origin, and false representation in and affecting interstate commerce in violation of 15 U.S.C. § 1125(a).

29. Defendants' wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Zywave's business, reputation and good will in its BROKER BRIEFCASE mark. Plaintiff has no adequate remedy at law and is entitled to injunctive relief.

**COUNT THREE:  
CYBERPIRACY PREVENTION  
PURSUANT TO 15 U.S.C. § 1125(d)**

30. Zywave re-alleges and incorporates by reference the allegations of paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Upon information and belief, Defendants have acted and are acting in bad faith with an intent to profit from their improper and unauthorized use of the BROKER BRIEFCASE mark.

32. Upon information and belief, Defendants have registered, trafficked in, and used the www.brokersbriefcase.com domain name. Said domain name is virtually identical to, confusingly similar to, and dilutive of the Plaintiff's BROKER BRIEFCASE mark;



33. Defendants' use of the BROKER BRIEFCASE mark of Zywave, including the use of the mark on Defendants' website is in violation of 15 U.S.C. § 1125(d).

34. Defendants' wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Zywave's business, reputation and good will in its BROKER BRIEFCASE mark. Plaintiff is entitled to an order of forfeiture and cancellation of the www.brokersbriefcase.com domain name or the transfer of the www.brokersbriefcase.com domain name to Zywave.

35. The Defendants use of the www.brokersbriefcase.com domain name violates Zywave's rights to the BROKER BRIEFCASE mark.

36. Zywave is entitled to bring this in rem civil action against www.brokersbriefcase.com pursuant to 15 U.S.C. § 1125(d).

37. ZYWAVE is entitled to a Court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to ZYWAVE.

**COUNT FOUR:**  
**VIOLATION OF UNIFORM**  
**DECEPTIVE TRADE PRACTICES ACT**

38. Zywave re-alleges and incorporates by reference the allegations of paragraphs 1 through 37 of this Complaint as if fully set forth herein.

39. Upon information and belief, Defendants have used and are using the BROKER BRIEFCASE mark of Zywave in commerce in connection with the advertising or use of non-downloadable computer software and related real estate broker services.

40. Defendants' use of the BROKER BRIEFCASE mark or designation constitutes a false designation of origin and a false or misleading description and representation of fact which is likely to cause a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services and a likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by another in violation of § 10-1-372;

41. Defendants' wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Zywave's business, reputation and good will in its BROKER BRIEFCASE mark. Plaintiff has no adequate remedy at law and is entitled to injunctive relief and costs pursuant to O.C.G.A. § 10-1-373.

**COUNT FIVE:**  
**VIOLATION OF THE GEORGIA**  
**UNFAIR COMPETITION STATUTE**

42. Zywave re-alleges and incorporates by reference the allegations of paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Upon information and belief, the aforesaid conduct of the Defendants by their unauthorized use of the BROKER BRIEFCASE mark constitutes and attempt to encroach upon the business of Zywave with the intention of deceiving and misleading the public in violation of O.C.G.A. § 23-2-55.

44. The Defendants' actions constitute unfair competition under Georgia law. The Defendants actions have damaged and continue to damage Zywave, its business, its reputation, and its goodwill. Zywave has no adequate remedy at law and is entitled to injunctive relief and costs pursuant to O.C.G.A. § 23-2-55.

**COUNT SIX**  
**COMMON LAW UNFAIR COMPETITION**

45. Zywave re-alleges and incorporates by reference the allegations of paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Upon information and belief, Defendants have used the BROKER BRIEFCASE mark or designation, or variations thereof, on or in connection with

the sale of computer software and real estate brokerage services, in interstate commerce and, in particular, on Defendants' website.

47. Defendants' use of the BROKER BRIEFCASE mark or designation constitutes a false designation of origin and a false or misleading description and representation of fact which is likely to cause initial interest confusion, actual confusion, and mistake, and to deceive as to the affiliation, connection, or association of Zywave with Defendants and as to the origin, sponsorship, or approval of Defendants' products and commercial activities by Zywave.

48. Defendants' use of the BROKER BRIEFCASE mark of Zywave, including the use of the mark on Defendants' website, constitutes false advertising, false designation of origin, and false representation in and affecting interstate commerce in violation of 15 U.S.C. § 1125(a).

49. The aforementioned conduct constitutes unfair competition with Zywave under Georgia's common law. Defendants' wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Zywave's business, reputation and good will in its BROKER BRIEFCASE mark. Zywave has no adequate remedy at law and is entitled to injunctive relief.

**COUNT SEVEN**  
**ATTORNEY'S FEES AND EXPENSES OF LITIGATION**

50. Zywave re-alleges and incorporates by reference the allegations of paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. The acts of the Defendants are in bad faith, are stubbornly litigious, and have caused Zywave such unnecessary trouble and expense that it is entitled to its attorney's and expenses of litigation pursuant to O.C.G.A. §§ 10-1-373 and 13-6-11.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Zywave asks this Court to enter judgment in its favor against Defendant as follows:

A. That a preliminary and permanent injunction issue restraining Defendants, their agents, servants, employees, successors and assigns and all others in concert and privity with them from using the BROKER BRIEFCASE or any other similar mark, in connection with the sale of computer software and the sale or real estate brokerage services, and related products pursuant to 15 U.S.C. § 1116;

B. That Defendants be directed to file with this Court and serve on Zywave within thirty (30) days after the service of an injunction a written report

under oath setting forth in detail the manner and form in which Defendants have complied with the injunction pursuant to 15 U.S.C. § 1116;

C. That Defendants be required to account to Zywave for Defendants' profits, to compensate Zywave for the actual damages suffered and sustained by Zywave as a result of Defendants' acts of infringement, false designation of origin, unfair competition, unfair and deceptive trade practices, and to pay the costs of this action, together with prejudgment interest, and that Zywave's recovery be trebled pursuant to 15 U.S.C. § 1117;

D. That Defendants be ordered to surrender for destruction all materials incorporating or reproducing the BROKER BRIEFCASE mark of Zywave pursuant to 15 U.S.C. § 1118 and the equitable power of this Court to enforce the statutory and common law of the State of Georgia;

E. That the Defendants be ordered to forfeit and cancel the www.brokersbriefcase.com domain name or transfer the www.brokersbriefcase.com domain name to Zywave or in the alternative that the registrar of the domain name brokersbriefcase.com be ordered to forfeit or cancel the domain name or to transfer the domain name to the ownership of ZYWAVE pursuant to 15 U.S.C. § 1125;

F. That Defendants be compelled to pay Zywave's attorneys' fees pursuant to 15 U.S.C. § 1117, O.C.G.A. § 10-1-373 and OCGA § 13-6-11; and

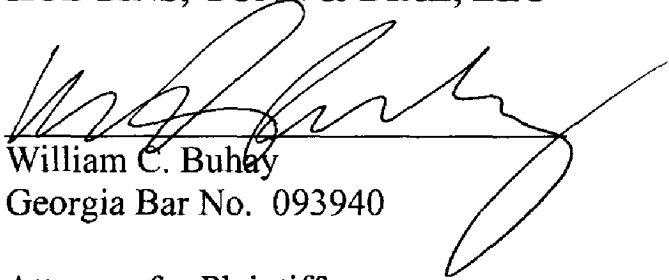
G. That the Court award such other and further relief as may be just and equitable.

**JURY DEMAND**

Zywave hereby demands and requests a trial by jury.

Respectfully submitted this 24<sup>th</sup> day of March, 2008.

**WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC**



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**UNITED STATES DISTRICT COURT  
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Zywave, Inc.,  
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Plaintiff,

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Alicia Moran a/k/a Alice Abdullaeva,  
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Defendants.


**CIVIL ACTION**

**FILE NO.:** \_\_\_\_\_

**CERTIFICATE OF FONT COMPLIANCE**

I certify that the COMPLAINT AND DEMAND FOR JURY TRIAL has  
been prepared with Times New Roman 14 approved by the Court in LR 5.1(B).

**WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC**

  
\_\_\_\_\_  
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